FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/LAM/2024/0603**
Property	**:**	**27 Roland Gardens, London SW7 3PF**
Applicants	**:**	**Anders Niklas Ostborn & Dilina Johannah Clyte Ostborn**
Representative	**:**	**Mr D Wand (Counsel)**
Respondent	**:**	**27 Roland Gardens Management Limited**
Representative	**:**	**Mr Madge-Wyld (Counsel)**
Type of application	**:**	**Appointment of a manager**
Tribunal member	**:**	**Judge N O'Brien, Mr Richard Waterhouse FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**10 June 2025**
Date of written reasons	**:**	**19 June 2025**

Reasons for an Oral Determination
Provided pursuant to Rule 36(2)b of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

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1. The tribunal made the following determinations at a face-to-face hearing held on 10 June 2025;

   (i) In accordance with section 24(1) of the Landlord and Tenant Act 1987 ("the Act") Nigel Douglas Cross BSc MRICS, of TPS Estates

(Management) Limited, is appointed as Manager of the subject property for a period of three years from 25 June 2025.

(ii) The manager shall manage the property in accordance with the Management Order dated 19 June 2025.

(iii) The Applicants' application for costs against the Respondent pursuant to Rule 13(1)b of the Tribunal Procedure Rules 2013 is dismissed.

(iv) The Tribunal makes an order under Section 20C of the Landlord and Tenant Act 1985 and, to the extent that the same is necessary, pursuant to s.5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that none of the Respondent's costs of these proceedings may be passed on to the Applicants as either a service charge or an administration charge.

(v) The Respondent must reimburse the tribunal fees paid in respect of these proceedings by the Applicants.

Background

1. By an application sent to the tribunal on 29 October 2024 the Applicants sought an order appointing Mark Nelson as manager of the property at 27 Roland Gardens, London SW7 3PF under section 24 of the Landlord and Tenant Act 1987 (the 1987 Act). The property consists of a large Victorian villa in Kensington which has been converted into 6 flats. The applicants are the leasehold owners of the lower ground floor flat. The Respondent is a leaseholder owned company.

2. Directions were issued by the tribunal on 6th November 2024 and the matter was listed for a final hearing on 20 March 2025.

3. The Respondent did not comply with the directions and was debarred from participating further in the proceedings by order of Judge Pittaway dated 18 February 2025.

4. The Applicants attended the hearing listed on 20 March 2025 and were represented by Mr Wand of counsel. Mr Mark Nelson also attended. The Respondents were represented by Ms D Leontieva. She was accompanied Mrs L Escudier and Mr Stevenson of Hillgate Management Ltd, the presently appointed managing agent. Ms Leontieva is a director of the Respondent and leasehold owner of Flat 2 and Mrs Escudier is married to Mr Romain Escudier a director of the Respondent and leasehold owner of Flat 5.

5. Ms Leontieva on behalf of the Respondent indicated that the Respondent did not contest the making of an order pursuant to s.24 of the 1987 Act in principle but had reservations about the manager proposed by the Applicants. The tribunal made no finding on this point but was also

concerned by the fact that Mr Nelson had never acted as a tribunal appointed manager and is not a member of a professional body, albeit he has several years' experience working in the property sector. The Applicants indicated through counsel that they would be content for their application to be adjourned for them to consider proposing an alternative manager in the place of Mr Nelson.

6. The tribunal considered a further application by the Respondent to lift the debarring order which it dismissed on the grounds that the conditions for lifting the bar were not met. Nevertheless the tribunal considered, and the Applicants agreed, that the Respondent should be permitted to adduce evidence and make further submissions as regards the identity of any manager and the terms of the order appointing him or her should it wish to do so.

7. The Respondent accepted that there had been a breach of the Respondent's repairing obligations albeit the extent of the breach was not agreed. Both the Applicants and the Respondent considered in principle that it would be just and convenient for a manager to be appointed by the tribunal, subject to the tribunal being satisfied that the manager proposed by the Applicant was suitable. Given the dispute between the Respondent and the Applicants as to the extent of the Respondent's repairing obligations and the apparent deterioration in the relationship between the parties and between the present managing agent and the Applicants, the tribunal agreed that it was in principle just and convenient for a manager to be appointed, subject to a suitable person being identified. The hearing of the application was adjourned to permit the parties further time to identify a more suitable candidate.

8. The Applicant subsequently proposed instructing Mr Nigel Douglas Cross BSc MRICS, of TPS Estates (Management) Limited. The Respondent did not take issue with his appointment.

Appointment of Mr Cross

9. Mr Cross attended the face-to-face hearing on 10th June and answered a number of questions put to him by the panel. He explained the steps he would take to start the process of planning major works of repair to the building and the approach he would take if there were any dispute between the leaseholders themselves and/or between the leaseholders and the freehold company as to whether the works proposed would fall under the Respondent's repairing obligations. He told us that in the event he was unable to facilitate agreement he would return to the tribunal for further directions. He has acted as a tribunal appointed manager on 11 previous occasions and we noted that in respect of 5 of those buildings his services were retained after the expiration of his appointment.

10. We were satisfied that Mr Cross is an appropriately qualified person to act as the manager, and directed that the appointment would be for a period of 3 years.

The Terms of the Order

11. The applicants provided the tribunal with a draft management order which broadly followed the form of draft order attached to the relevant Practice Statement. The Respondents did not take issue with the form of order proposed save in two respects. They did not agree to paragraph 5(a) in the Applicant's draft order which recorded that there had been a failure to address and undertake the repairs and maintenance required to rectify damp and water ingress into Flat 1 at the Property. Mr Madge-Wylde proposed that instead subparagraph (a) of paragraph 5 should read "there had been a failure on the part of the Respondent to undertake repairs and maintenance required to remedy issues of water ingress and damp into the property"; in other words the Respondent objected to the reference to Flat 1 rather than the property generally.

12. On the last occasion the tribunal made no finding of breach other than to record the admission that was made on behalf of the Respondent that it was in breach of its repairing obligations. We agreed that the form of words proposed by the Respondent better reflected that admission.

13. Additionally the Respondent objected to addition of words to paragraph 6(a) of the draft order which authorised Mr Cross to repair the damp proof course and/or undertake any other kind of damp-proofing. The Respondent submitted that paragraph 6(a) should simply read 'Carry out all obligations and responsibilities of the Respondent in the lease and in particular the Respondent's repair and maintenance obligations. Counsel for the Respondent submitted that it was not necessarily the case that any and all potential solutions to the issues of damp ingress into the property would fall under the Respondent's repairing obligations.

14. The Applicants in answer to questions from the tribunal clarified that they were not requesting the Tribunal to make any order which authorised Mr Cross to do anything which went beyond the Respondent's repairing obligations. In the circumstances we considered that the more general form of wording proposed by the Respondent would be more appropriate.

The Costs Application

15. The Applicants made an application for costs pursuant to Rule 13(1)b of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (the 2013 Rules). The grounds of the application were first set out in narrative form in an application dated 12 March 2025. With the assistance of Mr Wand we identified the following discrete grounds in the application;

(i) The Respondent deliberately ignored its repairing obligations under the lease;
(ii) The Respondent failed to comply with the tribunal's directions despite the fact that it resisted the application;
(iii) The Respondent unreasonably opposed the application;
(iv) The Respondent filed further evidence after it was debarred from further participating in the proceedings and applied a second time to lift the bar; and
(v) The Respondent's directors deliberately misled the tribunal when they described themselves to be satisfied with the performance of Hillgate Management in their collective statement dated 20 February 2025.

Rule 13(1)b: The law and relevant authorities.

16. The tribunal may make an order under Rule 13(1)b of the 2013 Rules if it is satisfied that a party has acted unreasonably in bringing defending or conducting proceedings.

17. In *Willow Court Management Co v Alexander [2016] UKUT 290(LC)* the Upper Tribunal declined to adopt a wider interpretation of 'unreasonable conduct' to encompass the conduct of a party who fails to prepare adequately for a hearing, fails to adduce proper evidence in support of their case, fails to state their case clearly or seeks a wholly unrealistic or unachievable outcome and went on to observe at para 24;

> *'An assessment of whether behaviour is unreasonable requires a value judgment on which views might differ but the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level. We see no reason to depart from the guidance given in Ridehalgh at 232E, despite the slightly different context. "Unreasonable" conduct includes conduct which is vexatious and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham's "acid test": is there a reasonable explanation for the conduct complained of?'*

18. In *Lea v GP Ilfracombe Management Company Ltd [2024] EWCA Civ. 1241* the Court of Appeal defined the that the test as follows at paragraph 15;

> "*A good practical rule for the tribunal to consider is; would a reasonable person acting reasonably have acted in this way?"*

19. At paragraph 28 of *Willow Court* the Upper Tribunal set out a three-stage approach which the tribunal should adopt when considering whether to make an award of costs under Rule 13(1)b;

> *"At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be'.*

20. At paragraph 43 Mr Martin Roger QC gave the following guidance on the approach which the tribunal should take when considering such applications;

> "*We conclude this section of our decision by emphasising that such applications should not be regarded as routine, should not be abused to discourage access to the tribunal, and should not be allowed to become major disputes in their own right. They should be determined summarily, preferably without the need for a further hearing, and after the parties have had the opportunity to make submissions. We consider that submissions are likely to be better framed in the light of the tribunal's decision, rather than in anticipation of it, and applications made at interim stages or before the decision is available should not be encouraged. The applicant for an order should be required to identify clearly and specifically the conduct relied on as unreasonable, and if the tribunal considers that there is a case to answer (but not otherwise) the respondent should be given the opportunity to respond to the criticisms made and to offer any explanation or mitigation. A decision to dismiss such an application can be explained briefly. A decision to award costs need not be lengthy and the underlying dispute can be taken as read. The decision should identify the conduct which the tribunal has found to be unreasonable, list the factors which have been taken into account in deciding that it is appropriate to make an order, and record the factors taken into account in deciding the form of the order and the sum to be paid.*

21. We do not consider that the first or third grounds are arguable. The first ground relates to the Respondent's conduct as landlord not as a litigant.

In any event the pursuit of a weak defence or an unrealistic outcome is not on its own to be considered evidence of unreasonable behaviour. Further we are not satisfied that the Respondent's directors apparent belief that damp proofing works to Flat 1 were not the Respondent's responsibility was manifestly without foundation and in any event was based on advice received from the managing agent.

22. We do not consider that either the Respondent's failure to comply with directions or its two applications to lift the debarring order amounted to unreasonable conduct either. In any event we accept Mr Madge Wylde's submission that the appropriate sanction was the debarring order itself which was made and not lifted.

23. We reject the submission that this was such a clear and obvious case for the appointment of a manager that it was unreasonable for the Respondent to resist the application. In our view the outcome was not clear from the outset and the primary dispute between the parties was not the conduct of the manager (although this was certainly part of it) but the proper interpretation of the lease. An application would always have been required for a manager to be appointed and could not be simply consented to. Further we do not consider the fact that the Respondent's position in respect of the application evolved over the course of the proceedings to be unreasonable or even unusual.

24 Of course in principle a finding that a party has deliberately mislead the tribunal could amount to unreasonable conduct. The Applicants submit that the directors' description of their views of the performance of the manager as set out in their collective statement signed on 20 February 2025 was entirely at odds with their true views as evinced by communications passing between the directors since 2023. It is fair to say that the directors who signed the collective statement have over the years expressed strong dissatisfaction with Hillgate's performance and at times actively discussed replacing them with new agents. Their statement reads;

> "*over the years Hillgate has effectively managed the property and addressed various issues as they have arisen. While we acknowledge that there is always room for improvement, their performance has been reasonable and consistent with what one might expect from a managing agent in similar properties".*

They go on to acknowledge that there was a 'communication gap' between the Applicants and Hillgate regarding the damp issue in Flat 1.

25. This is hardly a glowing endorsement. Had the collective statement said 'We the directors have never had any issues with Hillgate's performance, and have always considered that their performance of their duties has been exemplary at all times and the Applicant's complaints are without foundation' there might at least be a starting point. The matters raised

do not support the assertion of deliberate misrepresentation of known facts.

26. In conclusion we do not consider that the conduct of the Respondent has been unreasonable within the meaning of s13(1)b of the 2013 Rules and we dismiss the application for costs.

27. The Applicants have made applications for orders under s20C of the 1985 Act and paragraph 5A of Schedule 11 to the 2002 Act. The applications are not contested. We consider that it is reasonable to make the orders sought as the Applicants have essentially succeeded in their application. We also consider that it is reasonable to make an order for the reimbursement of the tribunal fees paid in connection with the proceedings.

Name : Judge N O'Brien Date 19 June 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).